

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
Policy No. P2-LWR-02-_____

THIRD PARTY WAR RISK LIABILITY INSURANCE

I. COVERAGE

A. The United States of America (hereinafter, the Insurer), represented by the Administrator of the Federal Aviation Administration, acting for the Secretary of Transportation (hereinafter the Administrator), shall provide by this Policy of Insurance, in accordance with applicable provisions of law and subject to all limitations thereof, and upon the payment of a premium, pursuant to the provisions of chapter 443 of title 49 of the United States Code (49 U.S.C. 44301 through 44310 et seq.) (hereinafter, chapter 443), Third Party War Risk Liability Insurance (hereinafter, the Insurance) of the type indicated and in the limits shown herein for War Risk Occurrences arising from the operation of aircraft, and the provision of goods or services directly related to and necessary for the operation of such aircraft, by

(hereinafter, the Insured), or by its vendors (including, but not limited to, airports and consortia and their subcontractors), agents, and subcontractors of or for goods or services directly related to and necessary for the operation of such aircraft (hereinafter, the vendors, agents, and subcontractors), anywhere in the world.

B. Subject to the limits of liability, exclusions, conditions, and other terms of this Policy of Insurance, the Insurer hereby agrees to pay on behalf of the Insured all sums which the Insured shall be legally liable to pay to any person or persons who are not passengers or employees of the Insured on the aircraft, or by final judgment be adjudged to pay to any such person or persons, including damages for personal injuries sustained, including death at any time resulting therefrom, damages for care and loss of services, or by reason of loss or damage to or destruction of property, including the loss of use thereof, resulting from a loss resulting from a War Risk Occurrence while the aircraft are being operated by or are under the control of the Insured.

C. Subject to the limits of liability, exclusions, conditions, and other terms of this Policy of Insurance, the Insurer hereby also agrees to pay on behalf of the Insured any obligation that the Insured might have undertaken, pursuant to a written agreement, on behalf of its vendors, agents, and subcontractors, to pay all sums for which the vendors, agents, and subcontractors shall be legally liable to pay to any person or persons or entity as a result of such War Risk Occurrence, or by final judgment be adjudged to pay to any such person or persons, including damages for personal injuries sustained, including death at any time resulting therefrom, damages for care and loss of services, or by reason of loss or damage to or destruction of property, including the loss of use thereof, resulting from a loss resulting from a War Risk Occurrence while the aircraft are being operated by or are under the control of the Insured.

D. For purposes of Articles I and II of this Policy of Insurance, the term "Insured" shall include (1) such persons that are aircraft lessors, lienholders, or other persons with an ownership interest in an aircraft operated by the Insured (hereinafter, the loss payees or additional insureds) and (2) that the Insured is required by written agreement, as a condition for the Insured to operate that aircraft, to list such loss payees or additional insureds in any commercial war risk insurance policy carried by the Insured. The Insured agrees that it shall, within five (5) working days of request by the Insurer, (1) identify in writing all such loss payees or additional insureds to the Insurer and (2) shall certify in writing that its agreements with the loss payees or additional insureds require, as a condition for the Insured to operate the aircraft, the inclusion of the loss payees or additional insureds in commercial war risk insurance coverage obtained by the Insured.

E. Insurer also agrees to pay, on behalf of the Insured, any War Risk Occurrence liability that the Insured is obligated to pay under a contract of indemnity to a company providing passenger, cargo, or baggage screening services under a contract with the United States.

II. AMOUNTS

The amount of Insurance provided under this Policy of Insurance shall not exceed \$_____ [*dollar amount equal to twice the carrier's previous per occurrence limit of liability*] of liability per occurrence incurred by the Insured for losses resulting from a War Risk Occurrence. The amount of Insurance provided under this Policy of Insurance shall exclude the first Fifty Million U.S. Dollars (US\$50,000,000) of liability incurred only by the Insured, provided however, this exclusion shall not apply to the Insured's vendors, agents, or subcontractors for losses resulting from a War Risk Occurrence, nor shall this exclusion apply to the Insured in the event the Insured's aggregate limit for losses resulting from a War Risk Occurrence under its commercial war risk insurance policy is reached.

III. CONDITIONS

War Risk Occurrences are defined as any loss or damage directly or indirectly arising from, or occasioned by, or happening through, or in consequence of:

1. War (including war between Great Powers) (whether declared or not) invasion, acts of foreign enemies, warlike hostilities, civil war, rebellion, revolution, insurrection, martial law, exercise of military or usurped power, or any attempt at usurpation of power.
2. Strikes, riots, civil commotion, or labor disturbances.
3. Any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional, except for ransom or extortion demands.
4. Any malicious act or act of sabotage, vandalism or other act intended to cause loss or damage.

5. Confiscation, nationalization, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any foreign government (whether civil or military or de facto) or foreign public or local authority.

6. Hijacking or any unlawful seizure or wrongful exercise of control of the aircraft or crew (including any attempt at such seizure or control) made by any person or persons onboard the aircraft or otherwise, acting without the consent of the Insured.

7. The discharge or detonation of any weapon or explosive device while on an aircraft covered by this Policy of Insurance.

IV. DEFENSE AND SETTLEMENT OF CLAIMS

A. The Insurer shall have the duty to defend any suit or claim against the Insured seeking damages on account of any bodily injury, personal injury, or property damage covered under this Policy of Insurance, even if such suit is groundless, false or fraudulent and may make such investigation, negotiation, and settlement of any claim or suit as it deems proper and expedient, but the Insurer shall not be obligated to pay any claim or judgment or to defend any suit or claim after the applicable limit of the Insurer's liability has been exhausted by payment of judgments or settlements.

B. During such time as the Insurer is obligated to defend a claim or claims under the provisions of the preceding paragraph, the Insurer shall pay with respect to such claims, in addition to the applicable Limit of Liability:

1. All expenses incurred by the Insured, all costs taxed against the Insured in any suit or claim defended by the Insurer, and all interest on the entire amount of any judgment thereon which accrues after entry of the judgment and before the Insurer has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Insurer's liability thereon under this Policy of Insurance; and

2. All reasonable expenses incurred by the Insured at the Insurer's request, other than for loss of earnings or for wages or salaries of employees of the Insured and its vendors, agents, and subcontractors.

V. PROMPT NOTICE OF LOSS

A. In the event of any War Risk Occurrence which may result in loss, damage, or expense for which the Insurer may become liable, prompt notice thereof, on being known to the Insured or its vendors, agents, or subcontractors, shall be given by the Insured to the Administrator of the Federal Aviation Administration, but failure to give such prompt notice because of War Risk Occurrences or regulations shall not prejudice this insurance.

B. If a claim is made or suit is brought against the Insured or its vendors, agents, and subcontractors, the Insured shall immediately notify the Insurer and timely provide a copy of every demand, notice, summons, pleading, motion, document filed with a court, settlement offer, and other process received by the Insured or its vendors, agents, and subcontractors or their representatives.

C. Notwithstanding anything in Paragraphs A and B of this Article V, the failure by an Insured's vendors, agents, or subcontractors to comply with Paragraphs A and B of this Article V shall not prejudice this Insurance.

VI. ASSISTANCE AND COOPERATION OF THE INSURED

A. The Insured shall not interfere in any negotiations by the Insurer for settlement of any legal proceedings in respect of any War Risk Occurrence for which the Insurer may be liable under this Policy of Insurance. Provided, that in respect of any War Risk Occurrence likely to give rise to a claim under this Policy of Insurance, the Insured is obligated to, and shall take such steps to, protect its and the Insurer's interests as would reasonably be taken in the absence of this or similar insurance. The Insurer shall consult in good faith, and adequately in advance, with the Insured regarding its proceeding and settlement strategy and proposed settlements, and ensure that it develops in good faith with the Insured a litigation defense or settlement strategy.

B. Whenever required by the Insurer, the Insured shall aid in securing information and evidence and in obtaining witnesses and shall cooperate with the Insurer in the defense of any claim or suit or in the appeal from any judgment, in respect of any War Risk Occurrence as herein provided.

VII. ACTION AGAINST THE INSURER

No action shall lie against the Insurer unless, as a condition precedent thereto, the Insured shall have fully complied with all of the terms of this Policy of Insurance and until the amount of the Insured's obligations to pay, with respect to the specific legal action or claim in question, shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the claimant and the Insurer. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy of Insurance to the extent such judgment or written agreement is not in excess of the remaining insurance afforded by this Policy of Insurance. Nothing contained in this Policy of Insurance shall give any person or organization any right to join the Insurer as a co-defendant in any action against the Insured to determine the liability of the Insured. Neither the filing nor the adjudication of bankruptcy or insolvency of the Insured or the Estate of the Insured shall relieve the Insurer of any of its obligations hereunder.

VIII. SUBROGATION RIGHTS

The Insurer shall be subrogated to all the rights which the Insured may have against any other person or entity, in respect of any payment made under this Policy of Insurance, to the extent of such payment, and the Insured shall, upon the request of the Insurer, execute all documents necessary to secure to the Insurer such rights.

IX. SUPPLEMENTAL COVERAGES

The coverage afforded by this Policy of Insurance shall apply with respect to reasonable expense incurred by the Insured for the covered perils for the purpose of:

A. damages incurred by third parties as a result of search and rescue operations for an aircraft insured hereunder determined to be missing and unreported after the computed maximum endurance of the flight has been exceeded; or

B. damages incurred by third parties as a result of the removal of wreckage of an aircraft insured hereunder; or

C. the foaming of a runway to prevent or mitigate possible loss or damage to third parties because of a malfunction of the aircraft.

X. ACTIVATION AND TERMINATION

A. This Policy of Insurance shall remain in effect for a period of sixty days after the effective date or until amended by the Administrator or terminated by either the Insurer or the Insured.

B. This Policy of Insurance shall terminate either:

1. at 23:59 GMT on August 17, 2002, or
2. if prior to the date and time set forth above, five (5) days after notice of cancellation has been directly communicated to the Insured by the Administrator with a confirmation copy of this notice sent therewith by facsimile or other additional means of communication or delivery to the insured.

C. The Insured warrants that this Policy of Insurance is free from any claim for loss, damage, or expenses covered under any commercial policy in effect for the benefit of the Insured.

D. The Administrator may terminate this Policy of Insurance if comparable insurance becomes obtainable on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States. The Insured agrees that it will promptly notify

the Administrator of any significant change in the terms and conditions under which insurance of the type provided by this Policy of Insurance is obtainable from such commercial sources.

E. The Administrator may terminate this Policy of Insurance for default if the Insured fails to pay the premium. In the event of default, the Insurer will forward a Notice of Default to the insured. The Insured agrees to:

(1) calculate the actual premium for all operations conducted by the Insured between acceptance of the Insured's application for insurance and the date and time of termination for default, and submit the calculation for the actual premium to the Insurer within thirty (30) days of the date on the Notice of Default; and

(2) pay the actual premium for the all operations conducted by the Insured between acceptance of the Insured's application and the date and time of termination for default.

XI. PAYMENT OF CLAIMS

A. The Insurer shall make prompt payment in full, on behalf of the Insured of any claim covered under this Policy of Insurance after the Insured becomes legally liable to pay, or by final judgment be adjudged to pay. Any subsequent post-incident losses incurred that are directly related to the incident shall be covered by this Policy of Insurance as a loss directly related to the original subject loss incident.

B. The Insurer may at its discretion, and at any time prior to final settlement of any claim by the Insured, elect to make a partial payment to the insured for any loss, damage, or expense covered by this Policy of Insurance.

XII. PREMIUM PAYMENT

A. The actual premium for this Policy of Insurance shall be based upon whether the Insured conducts passenger or air freight operations, or a combination of the two. There are four classes of premiums based upon the extent of the policy coverage held by the carrier.

Class I. If the amount of coverage in Article II amounts to less than One Billion US Dollars (\$1,000,000,000), the total premium shall be calculated as the sum of premiums for passenger and freight operations as set forth below:

Formula for Class I

Premium for Passenger Operations = (\$0.03 x number of enplanements)
+ (\$0.03 x RPM/1000)

Premium for Freight Operations = \$0.17 x RTM/1000

Class II. If the amount of coverage in Article II amounts to One Billion US Dollars (\$1,000,000,000) or more, but less than Two Billion US Dollars (\$2,000,000,000), the total premium shall be calculated as the sum of premiums for passenger and freight operations as set forth below:

Formula for Class II

Premium for Passenger Operations = $(\$0.04 \times \text{number of enplanements})$
+ $(\$0.04 \times \text{RPM}/1000)$

Premium for Freight Operations = $\$0.25 \times \text{RTM}/1000$

Class III. If the amount of coverage in Article II amounts to Two Billion US Dollars (\$2,000,000,000) or more, but less than Three Billion US Dollars (\$3,000,000,000), the total premium shall be calculated as the sum of premiums for passenger and freight operations as set forth below:

Formula for Class III

Premium for Passenger Operations = $(\$0.05 \times \text{number of enplanements})$
+ $(\$0.05 \times \text{RPM}/1000)$

Premium for Freight Operations = $\$0.30 \times \text{RTM}/1000$

Class IV. If the amount of coverage in Article II amounts to Three Billion US Dollars (\$3,000,000,000) or more, the total premium shall be calculated as the sum of premiums for passenger and freight operations as set forth below:

Formula for Class IV

Premium for Passenger Operations = $(\$0.05 \times \text{number of enplanements})$
+ $(\$0.05 \times \text{RPM}/1000)$

Premium for Freight Operations = $\$0.33 \times \text{RTM}/1000$

where RPM = revenue passenger miles
RTM = revenue ton miles

B. The Insured shall estimate the deposit premium for the effective period of this Policy of Insurance based on the formulae set forth for the class of insurance appropriate to the coverage held by the Insured, and shall pay such deposit premium amount to the Insurer within ten (10) days of the effective date of this Policy of Insurance.

C. Within forty-five days of the expiration or termination of this Policy of Insurance, the Insured shall reconcile and correct the actual premium calculated with the deposit premium estimated for the premium difference.

1. If the premium difference is greater than the deposit premium paid by the Insured, the Insured shall pay the premium difference to the Insurer.

2. If the premium difference is less than the deposit premium paid by the Insured, the Insured shall seek a refund of the premium difference from the Insurer.

This insurance becomes effective as of 23:59 GMT of the 18th day of June 2002, and remains in effect until 23:59 GMT on the 17th day of August 2002, or until amended or terminated in accordance with the terms of this Policy of Insurance.

For the UNITED STATES OF AMERICA

By: _____
Title: Director of Aviation Policy and Plans
Federal Aviation Administration

Date: _____

For the INSURED, _____
Name of Insured Company

By an Officer of the Insured Empowered to Bind the Insured

Signature _____

Date: _____

Printed Name _____

Title _____